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ABSTRACT

The way in which Drew Pearson--who was involved in more than 100 libel actions during his nearly 37-year reporting career--fared in the courts and was affected by the ever-evolving libel law is considered in this paper. Among the topics discussed are the 1964 "Sullivan" decision, which held that a public official must prove "actual malice" before collecting damages for libel; court decisions made in the post-"Sullivan" era; a chain action brought in the late 1930s by Ohio Congressman Martin L. Sweeney against newspapers that published Pearson's column, which eventually forced the Supreme Court to confront the possibility of constitutional limitations upon the power to award damages for libel of a public official; other libel cases against Pearson before the "Sullivan" decision, one of which proved to be the only case in which Pearson had to pay court-directed damages; and libel cases against Pearson after the "Sullivan" decision. It is concluded that, due to outstanding legal advice and his own strong knowledge of the law, Pearson was amazingly successful in defending himself against libel actions, and that his successful record prior to 1964 shows that the "Sullivan" decision was not "the legal savior for the muckraker." An appendix lists damages sought in cases against Pearson. (GW)

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DREW PEARSON: A NAME SYNONYMOUS
WITH LIBEL ACTIONS

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DREW PEARSON: A NAME SYNONYMOUS
WITH LIBEL ACTIONS

It is not likely that any American syndicated newspaper columnist has been involved in as many libel actions as the late Drew Pearson.¹ The columnist, a pioneer in Washington-based investigative reporting, rates among the twentieth century's most prominent muckrakers.² His aggressive reporting during an era when elected officials were not accustomed to having their integrity publicly questioned obviously did little to endear him to those who found themselves unflattering subjects.

From the launching of his "Merry-Go-Round" column in 1932 until his death in 1969, Pearson criticized, ridiculed, and exposed wrongdoing among the country's elite. It is only natural that he was forced to defend himself against scores of libel actions.

How did he fare in the courts? How was he affected by the ever-evolving libel law? What were his contributions to the development of American libel law? These questions, to be considered in this paper, are indeed intriguing.

Constantly evoking the wrath of powerful persons, it is little wonder Pearson had to be particularly careful to stay within the boundaries of the constantly evolving libel law. The muckraker was publicly labeled a "chronic liar,"³ an "S.O.B.,"⁴ accused of such terse writing as to cause a federal official to leap to his death,⁵ verbally assaulted on the libel-proof Congressional floor,⁶ and physically attacked by irate officials.⁷

During his nearly thirty-seven-year reporting career, Pearson was afforded both greater and lesser degrees of protection under the perpetually developing law. In light of the subtleties and complexities of libel law, the U.S. Supreme Court has been involved in a continuing effort to define the proper relationship between the need for a vigorous press, as symbolized by the muckraking Pearson, and the legitimate interest in redressing wrongful injury by defamation.⁸

The stabilization of American libel law, allowing a privilege absent "actual malice" falsehoods about public officials and figures, actually resulted from a slow evolution.⁹ As America entered the 1960s, it was increasingly apparent that there was a need for a national libel standard, a solidifying solution that would bring all states under uniform guidelines. The formal nationalization of the law, of course, finally came in New York Times Co. v. Sullivan.¹⁰ The Court held that damages cannot be awarded a public official for defamatory falsehoods relating to his official conduct unless he proves "actual malice."¹¹ The decision was undoubtedly well-received by muckraking columnists such as Pearson, whose primary function was perceived to be that of performing a "watchdog" role over government.

Though Sullivan settled the libel uniformity problem, the holding nevertheless raised a great many questions.¹² In cases which followed, the Court continued to extend, refine, and eventually narrow protection given the press in defamation suits. The Court, for example, extended the "actual malice" doctrine to prosecutions for criminal libel,¹³ to public employees who held positions of responsibility for the control of public affairs,¹⁴

to the tort of "false light" invasion of privacy,¹⁵ to public figures,¹⁶ and eventually, in Rosenbloom v. Metromedia, Inc., to "all discussion and communication involving matters of public or general concern, without regard to whether the persons involved are famous or anonymous."¹⁷

Even before the Rosenbloom judgment was handed down, however, Gertz v. Robert Welch, Inc.,¹⁸ was in the courts. Gertz is particularly significant in terms of momentum; for nearly a decade after Sullivan, libel decisions moved toward greater press protection. The circumstances in Gertz supplied the avenue for retrenchment; the case marked a retreat from the Rosenbloom principles. In applying the privilege, Gertz focused not on whether the publication concerned an event of public interest, but upon the pre-Rosenbloom status of the person defamed. The U.S. Supreme Court held that a publisher or broadcaster of defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim the Times protection against liability for defamation on the ground that the statements concerned an issue of public or general interest.¹⁹ The Court said one could become a public figure only by thrusting oneself "to the forefront of particular public controversies in order to influence the resolution of the issues involved," or by assuming a role "of especial prominence in the affairs of society."²⁰ And, though the effects of Gertz were uncertain, in Time, Inc. v. Firestone, the Court forged ahead with another far-reaching decision less than two years later.²¹

From its earliest beginnings, then, it is evident that the law of defamation has developed through the balancing of

conflicting interests. Thus, Pearson was forced to constantly keep the ever-evolving libel law in perspective, always realizing that to cross over the permissible-forbidden line established by the Court could result in significant monetary and credibility loss. Obviously, during most of his writing career, Pearson operated in a more stringent legal climate than journalists of the post-1964 era. The law, however, is still not static; Pearson's successor, Jack Anderson, after enjoying a liberal libel law atmosphere until 1974, must be more careful to stay within the stricter boundaries established in Gertz.

Though Pearson enjoyed the benefit of the "actual malice" rule for only five years, lack of it during most of his writing career apparently did not greatly hamper him. The muckraker paid court-directed libel damages in only one of the more than one-hundred actions brought against him during his lifetime.²² The non-uniformity of libel law caused him extensive grief, however, as evidenced by a chain action brought by Ohio Congressman Martin L. Sweeney against some of the newspapers which published the "Merry-Go-Round" column. Sweeney filed sixty-eight suits in jurisdictions blanketing the United States.²³ Fortunately for the muckraker, most of the suits were dismissed in their early stages. By 1943--after thousands of dollars, manhours, and depositions--all had been dismissed. Pearson had not paid a penny in damages.²⁴ Still, the suit was an obvious attempt to bankrupt the column.

The Sweeney Chain Suit

The Sweeney action is important for a number of reasons: lack of a uniform standard in American libel law had long been a

topic of conversation, but the well-publicized chain suit brought the dilemma to the forefront; several law review commentaries dealt with the massive suit,²⁵ thus reminding scholars across the country of the inconsistencies in the law; newspapers published progress reports of some of the most prominent chain cases;²⁶ editors were alerted to the dangers of a chain suit in an increasingly technological business;²⁷ the nation's Congressmen became aware of the ramifications of jurisdictional discrepancies when dealing with libel suits involving public officials;²⁸ and, perhaps most importantly, the U.S. Supreme Court, though it could not reach a majority decision, for the first time in its history, squarely confronted the question of the possibility of constitutional limitations upon the power to award damages for libel of a public official.²⁹

The chain action evolved from a December 23, 1938, "Merry-Go-Round" column which Sweeney alleged charged him with opposing the appointment of Emerich Freed to a federal district judgeship because the man was a Jew. Though judges in nearly all jurisdictions which heard the Sweeney cases ruled that Pearson's remarks were not libelous per se, the Congressman's counsel was able to list nine instances in which the case was not dismissed on this ground.³⁰

Judges in many jurisdictions articulated some relatively liberal free press decisions. The District of Columbia's Court of Appeals emphasized that it was not actionable to publish erroneous and injurious statements regarding political conduct and views of public officials so long as no charge of crime, corruption,

or gross immorality was made.³¹ Associate Justice Edgerton, writing for the court, stated:

Cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors. Since Congress governs the country, all inhabitants, and not merely the constituents of particular members, are vitally concerned in the political conduct and views of every member of Congress.³²

In what was likely the strongest rejection of Sweeney's complaint, Judge Allred of the Southern District of Texas, said:

It seems to me this Court should not close its eyes to the fact that the "ordinary reader" of defendant Corpus Christi Texas, Caller-Times probably never heard of Congressman Sweeney before the publication, didn't remember his name five minutes afterward and did not care whether he opposed the appointment of Freed, or on what grounds.³³

Meanwhile, on the federal appeals level, the Third Circuit affirmed a lower court judgment dismissing Sweeney's complaint against the Philadelphia Record Co., and two other corporations.³⁴ In a satiric gesture toward the Ohio Congressman's stance, the court said:

At the most the appellant is charged with being a bigoted person who, actuated by a prejudice of an unpleasant and undesirable kind, opposed a foreign born Jew for a judicial appointment. Let us assume that it was stated in the alleged libel that the plaintiff opposed the appointment of a candidate simply because he was an Eskimo born above the Arctic Circle. We think that this example makes obvious the absurdity of the plaintiff's position.³⁵

The column did not allege that Sweeney persecuted foreign-born Jews; rather, according to the court, it merely said that he opposed one for a federal judgeship.³⁶

Though the "Merry-Go-Round" column of which Sweeney complained was repeatedly held to be not libelous per se, there was one notable exception. The U.S. Court of Appeals for the Second Circuit, by a divided vote, held that it was libelous per se under the law of New York. In Sweeney v. Schenectady Union Publishing Co.,

the circuit court reversed and remanded the case back to the Northern District of New York which had dismissed Sweeney's complaint on the ground that no cause of action had been pleaded.³⁷ The circuit court reasoned that in places where Jews made up a sizeable portion of the population, as was the case in New York, it might be taken for granted that there would be an appreciable number of people who would hate or hold in contempt one who discriminated against a Jew merely because he was a Jew. The majority, Judges Chase and Hand, with Clark dissenting, felt the complaint was sufficient and that the column should be required to meet its merit and face trial.³⁸

The most historically significant portion of the Schenectady case, however, was Justice Clark's dissent. He wrote that there should be no libel against public officials unless statements were both false and unfair, and unless the aggrieved official proved special damages. Clark argued, in effect, that where a public official is concerned, there should be more latitude given the press than when discussing a person who held no office.³⁹

Clark's bold dissent served as impetus for the U.S. Supreme Court to grant certiorari to review the decision.⁴⁰ The circuit court's holding was discussed and widely criticized.⁴¹ Though the Supreme Court would not receive another opportunity for twenty-two years to consider the constitutional limitations upon the power to award damages for libel of a public official,⁴² it delivered no momentous decision. The justices divided four-to-four, with Justice Jackson taking no part.⁴³ The lower court decision stood. The Supreme Court did not issue a formal

opinion and the reasons for Justice Jackson's withdrawal and the individual stands of the other eight justices were not made public.⁴⁴ American libel law might have been dramatically altered had Jackson participated. This, however, was not to be.

One fact, though, emerged from the extended Sweeney litigation: Pearson would diligently strive to uphold his integrity as a reporter through tireless and costly litigation. This near-fanaticism to keep a clean record against libel suits initiated against him became increasingly evident during ensuing decades. Scores of public officials, public figures, and private persons would file libel actions against the muckraker. But, like Sweeney, they would discover that the combination of perseverance, money, power of the press, and skillful legal maneuvering through available defenses would prove to be a nearly unbeatable trump hand for the columnist.

From the late 1930s until his death, not a single year passed that Pearson did not find himself in the courts. The plaintiffs varied; they included gubernatorial candidates,⁴⁵ state attorneys general,⁴⁶ lobbyists,⁴⁷ military officers,⁴⁸ industrial millionaires,⁴⁹ even a cigar and news stand operator.⁵⁰ The allegedly libelous columns also varied, ranging from bribery allegations of public officials,⁵¹ to unchastity, through innuendo, of a woman.⁵²

Pre-Sullivan Pearson Libel Cases

Well-publicized accounts of "anti-Pearson" behavior and remarks possibly encouraged public officials and others to file law suits. The columnist was, without doubt, a "marked man" during his entire writing career, particularly during the 1930s, 1940s,

and 1950s when he stood at the top of the list of America's controversial muckrakers.⁵³

Excluding the massive Sweeney chain libel action, the columnist was a defendant in at least twenty-six libel cases before 1964.⁵⁴ In addition, his writings led to at least three lawsuits against newspapers which published his columns.⁵⁵ Not content merely to defend himself, however, he filed libel actions on at least thirteen occasions.⁵⁶

Though undoubtedly a defendant in more libel suits than any syndicated columnist of his time--he was, in fact, likely sued more times than any American journalist in history--Pearson paid court-directed damages in only one.⁵⁷ Norman Littell, former assistant attorney general, filed a \$300,000 libel action against Pearson and the Bell Syndicate, Inc., for a "Merry-Go-Round" column published in April of 1949. Littell, who had served in his government capacity from April of 1939 until November of 1944, was practicing law in Washington, D.C., when he filed suit against the muckraker.⁵⁸

The cause of action was based on thirty-seven words, with particular emphasis on the last nineteen:

The Justice Department is casting a quizzical eye on ex-Assistant Attorney General Norman Littell. They have reports that Littell is acting as a propagandist for the Dutch government, though he failed to register as a foreign agent.⁵⁹

Littell contended that the statement amounted, on its face, to an accusation of crime, that it represented an assault upon his integrity as a professional man to earn a living, and that it was libelous per se.⁶⁰

The case gained considerable attention as the trial approached. Pearson instinctively realized that his perfect record in defending against libel suits was at stake. An entry in his diary on April 27, 1953, was ominously prophetic:

Started the Littell trial. Unfortunately I had a lecture engagement at the University of Florida, Gainesville. This is the first time I have ever been absent during any part of a libel suit, and I am superstitious.⁶¹

The columnist's anxiety was well-grounded; on May 15, 1953, the jury held for Littell, thus handing Pearson his first (and only) libel suit loss during his lifetime.⁶² The jury awarded Littell \$50,000, plus one dollar in punitive damages. Pearson settled for \$40,000.

Viewed against the total picture, the \$40,000 payment was paltry. The columnist, however, did not interpret it that way; to him it represented a black mark on his record. Still, the muckraker's success in defending against libel suits in the pre-1964 era is truly phenomenal when one considers that there was a lack of constitutional protection and little uniformity in libel law. The columnist repeatedly proved, however, that common law defenses, if effectively utilized, could provide even muckraking investigative journalists with ample protection.

At any rate, as America ushered in the faster-paced 1960s, with the U.S. Supreme Court on the verge of nationalizing libel law and with more syndicated columnists engaging in investigative reporting, there was reason to speculate that libel actions against Pearson would decrease. It would be exceedingly difficult for public persons to collect damages and there would be more "targets"--investigative reporters--for potential suits. Though

a strong possibility existed that suits would taper off against the muckraker, this was not to be.

Post-Sullivan Pearson Libel Cases

Pearson found himself in the courts every year from the Sullivan decision until his death. During the post-1964 years, for example, the columnist was a defendant in at least eleven libel suits⁶³ and a plaintiff in at least two actions.⁶⁴ Though the Times "actual malice" rule made it more difficult for "public" persons to collect libel damages, it did not stop them from filing suit. Actions brought against the muckraker or newspapers which carried his column by a Congressman⁶⁵ and a candidate for his party's nomination to the U.S. Senate⁶⁶ were among the post-1964 Pearson cases which contributed to American libel law development.

United States Representative Eugene B. Keogh of New York filed three suits against Pearson between 1962 and 1964 seeking aggregate damages of \$5,000,000.⁶⁷ The first case, filed in the federal court for the District of Columbia, named Pearson and The Washington Post Company as defendants. The suit was based on two "Merry-Go-Round" columns which Keogh claimed contained bribery allegations.⁶⁸ The Post corporation moved for summary judgment; the district court denied it, but later consented to reconsider.⁶⁹ Pearson also requested reconsideration, but his motion was denied for lack of standing. Attorneys for the columnist had failed to file for summary judgment with the Post corporation and thus, the court reasoned, Pearson had suffered no injury by its denial.⁷⁰

The District Court was, however, noticeably baffled with Keogh and the interpretation of the then relatively recent Sullivan decision; thus, it certified the case for interlocutory appeal.⁷¹ The Circuit Court reversed.⁷² In a decision which extends increased protection against libel judgments to newspapers dealing with syndicated columns, the court ruled that there was no

convincing, realistic basis for the position that newspapers in circumstances similar to the Post's should bear greater responsibilities of verification [of syndicated columns] than the Supreme Court required of the New York Times, where information available from published articles in the Times' own files "demonstrated the falsity of the allegations."⁷³

Circuit Court Judge Wright emphasized that verification of syndicated columns would be a time-consuming process, a sizeable hurdle in the day-to-day news operation. The court also stressed that extensive verification procedures would be extremely costly and could induce self-censorship.⁷⁴

The court, of course, granted summary judgment only for the Post corporation; Pearson was left as a defendant. He died, however, with two Keogh cases pending.⁷⁵ There were numerous procedural filings by attorneys for both parties after the muckraker's death, but the Pearson family, in order to close the columnist's estate, decided to settle the cases. Pearson's stepson, Washington, D.C., attorney Tyler Abell said, however, that he hated to do it.⁷⁶

Ironically, though the Pearson estate was forced to pay a settlement to Keogh, American newspapers profited from the case. Circumstances were similar in another libel suit settled after Pearson's death. Alphonse Roy, a candidate for his party's

nomination for a U.S. Senate seat in New Hampshire, brought suit based upon a "Merry-Go-Round" column which was published on September 10, 1960, only three days before the state Democratic Party's primary election.⁷⁷ The column referred to maneuvering in the primary campaign and characterized Roy, who had served as a U.S. Marshal, as a "former small-time bootlegger."⁷⁸ Roy lost the race; he subsequently sued the Monitor Patriot Company and the North American Newspaper Alliance, distributor of the column, for libel.⁷⁹

The trial judge instructed the jury that if it found the libel to be in the "public sector," the Times "actual malice" test would have to be met and the verdict would have to be in favor of the defendant. If the jury determined the publication to be in the "private sector," however, there were only two possible defenses: "lawful occasion" and "conditional privilege."⁸⁰ The jury returned a verdict which provided for \$10,000 in damages from both the newspaper and the NANA. On appeal, the New Hampshire Supreme Court affirmed, holding that the trial judge properly sent to the jury the question of whether or not the alleged libel was "relevant" to Roy's fitness for office.⁸¹

The U.S. Supreme Court, however, reversed and remanded. The majority held that publications concerning candidates for public office "must be accorded at least as much protection under the First and Fourteenth Amendments as those concerning occupants of public office,"⁸² that there should be no "syllogistic manipulation of distinctions between 'private sectors' and 'public sectors,'"⁸³ and that a "charge of criminal conduct, no matter how remote in time or place, can never be irrelevant to an

official's or a candidate's fitness for office" for purposes of applying the Times "actual malice" rule.⁸⁴ Though the High Court extended protection to journalists when writing about an official's past life, the Pearson family again decided to settle the case rather than go through extended litigation in the New Hampshire state courts. Pearson's stepson Abell, however, emphasized that had his stepfather been alive, the case would have been allowed to run its course.⁸⁵

Summary and Conclusions

Though critics of the late Drew Pearson contend that his sometimes careless reporting did nothing to enhance a free press, his record in defending against at least 108 libel actions brought against him or newspapers which published his column, contradicts this conception. Pearson, who paid court-directed damages in only one libel suit brought against him during his lifetime, also filed at least fifteen libel actions as a plaintiff.

Pearson could have crumbled under the pressure of the multitude of suits; he did not. What makes his record even more amazing is the fact that, though he criticized some of the most powerful persons in the country, he conceivably could have boasted of a perfect record had he enjoyed the "actual malice" rule during his entire writing career. Norman Littell, the only individual to collect court-directed damages when Pearson was still living, was clearly a public official or public figure under post-1964 standards; it is not likely he could have proved "actual malice." Also, had the muckraker lived to fight the Keogh and Monitor Patriot cases to their litigated conclusions, it is possible he could have won.

Why did Pearson enjoy such extraordinary success? First of all, he obtained outstanding legal advice. John Donovan, Pearson's personal attorney for some twenty-five years, coordinated all procedural filings. Donovan relied strongly on two precedents during the common law years: Sweeney v. Patterson⁸⁶ and Coleman v. MacLennan.⁸⁷ Both decisions, in their own way, emphasized that to uphold claims of public officials in libel actions, where the writer believed his statements to be true, would "reflect the obsolete doctrine that the governed must not criticize their governors."⁸⁸ With these cases as precedents, Donovan was often able to get actions filed against Pearson dismissed before trial. Pearson's attorney, however, would rely on more than precedents in his defense strategies. He would, for example, virtually inundate the courts with procedural filings. It was not unusual for an action filed against the muckraker to drag on for more than five years; it became a full-time job for the plaintiffs' attorneys to answer motions filed by Donovan.

Secondly, Pearson's strong layman's knowledge of the law also aided his success. He likely knew as much about libel law--and the boundaries within which he could legally operate--as most attorneys who did not specialize in it.⁸⁹ In addition, since the majority of libel actions brought against Pearson were in the District of Columbia, he enjoyed the relatively liberal rule established in Patterson.⁹⁰

Based on his success in the courts, Pearson was able to function effectively within the confines of the constantly evolving

American libel law. His impressive record lends support to a 1942 law review commentary by David Riesman which emphasized that, despite the non-uniform jurisdictional common law, journalists were hardly at a great disadvantage. Riesman contended that lawyers for large newspapers were specialists in libel law while many attorneys for libel action plaintiffs were inexperienced.⁹¹ Pearson's lawyers during the pre-1964 years did not advance any unique defenses nor push for increased press protection through a measure such as the nationalization of the law; they did not have to. They relied instead on the "bread and butter" common law defenses--truth, privilege of reporting, and fair comment. Thus, even a muckraking reporter such as Pearson was able to successfully operate within the protection accorded by the common law.

The landmark Sullivan case naturally had an effect on Pearson. Through the years, many of the persons who filed libel actions against him were public officials; the vast majority were at least public figures. Fewer suits were filed against the columnist after 1964, but the reduction was not dramatically significant. The "actual malice" rule definitely made it easier for Pearson's attorneys to defend against libel actions; it also served as a tangible security that was not present during the common law years. The fact remains, however, that Pearson lost only one suit before 1964--and, including the massive Sweeney chain action, at least ninety-seven were filed. Thus, one could hardly conclude that Sullivan was the legal savior for the muckraker.

Pearson's effects on libel law are difficult to measure. It can, however, logically be concluded that he made his presence felt. The pervasive Sweeney chain suit made jurisdictional differences in the common law obvious. Two of the cases--Sweeney v. Schenectady Union Publishing Co.⁹² and Sweeney v. Patterson⁹³ were cited in Sullivan.⁹⁴ Thus, through Pearson's perpetual involvement in libel suits during the common law years, the need for a proper balancing between a free, aggressive press and the equally important interest in providing safeguards for wrongful injury by defamation became a legal issue which could not be ignored.

The muckraker was also involved in at least two post-1964 decisions which further amplified the Times "actual malice" rule. In Washington Post Co. v. Keogh, the circuit court ruled that newspapers could not be held legally responsible for writings about public officials by syndicated columnists unless the editors had reason to believe the facts in the column were false.⁹⁵ In Monitor Patriot Co. v. Roy, the U.S. Supreme Court held that facts about a political candidate's early life--no matter how remote--were relevant to the discussion of public affairs and thus deserving of protection.⁹⁶

Pearson's successful record in defending press freedom through court involvement is one of the most amazing legacies of any American columnist. If nothing else, the sheer volume of litigation and aggregate dollars running into the millions emphasize the active role of the columnist in defending his and other journalists' First Amendment rights.

APPENDIX

Damages Sought in Cases Based on Drew Pearson Columns

(For complete case cites, see NOTES.)

Pre-1964 Actions Filed by Public Officials*

<u>Concluding Year of Litigation</u>	<u>Plaintiff</u>	<u>Damages Sought</u>
1934	MacArthur	1,750,000
1939-42	Sweeney (68 actions)	10,000,000**
1943	Duncan	200,000
1951	Howser	300,000
1953	Bramblett	500,000
1956	Wallace	250,000
1958	Earl (D.C.)	500,000
1958	Earl (Coos County, Ore.)	250,000
1958	Earl (W.D. Wash.)	***
1961	McGonigle	300,000
		\$14,050,000

Pre-1964 Actions Filed by Public Figures

1941	Anderson	100,000
1944	Monroe (D.C., #1)	1,000,000
1944	Monroe (D.C., #2)	350,000
1944	Ware	200,000
1945	Koehne	1,000,000
1945	Laughlin	100,000
1948	Rumely	200,000
1948	Silver Motors, Inc.	500,000
1949	Dennett	100,000
1952	Ross	500,000
1953	Franzino	200,000
1953	Littell (D.C., #1)	300,000
1953	Littell (D.C., #2)	300,000
1959	Rockwell	***
1962	Malaxa	50,000,000
1963	Dall	4,400,000
		\$59,250,000

Pre-1964 Actions Filed by Private Individuals

1951	Howard (D.C., #1)	250,000
1953	Gariepy	450,000
1953	Howard (D.C., #2)	200,000
1957	Kefalos	420,000
		\$1,320,000

Post-1964 Actions Filed by Public Officials

1965	Thompson	300,000
1965	Keogh (E.D. N.Y.)	1,000,000
1966	Christopher	6,000,000
1969	Dodd	5,000,000
1971	Roy	***
1974	Keogh (D.C., #1)	2,000,000
1974	Keogh (D.C., #2)	2,000,000
		\$16,300,000

Post-1964 Actions Filed by Public Figures

1965	Clark	1,000,000
1967	Corso	***
Pending	O'Brien	500,000
		\$1,500,000

Post-1964 Actions Filed by Private Individuals

1965	Coreil	***
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Total Damages Sought: \$92,420,000

*Placement of plaintiffs in these three categories is not, of course, automatic as evidenced by post-1964 libel decisions. For purposes of organization, the author has created these categories for pre-1964 cases though the courts did not create the "actual malice" test until 1964.

**Conservative estimate.

***Damages not listed or not available.

Notes

¹Pearson was involved in at least 123 libel actions during his nearly thirty-seven year "Washington Merry-Go-Round" reporting career. One Pearson biographer listed a higher "estimated" total, but the 123-suit figure can be documented. Of the 123 actions, 108 were brought against Pearson or newspapers which distributed his column. Included in this figure are sixty-eight suits brought by Ohio Congressman Martin L. Sweeney against the muckraker or some of his subscribing papers. Pearson was actively involved in all of the Sweeney suits--though not as a formal defendant. The columnist was also a plaintiff in at least fifteen libel actions. Total damages sought in the suits filed against Pearson or subscribing newspapers came to at least \$90,000,000. To realize the staggering significance of this conservative total, it is important to remember that the vast majority of the suits were brought long before excessive dollar amounts were sought in most libel actions. The 123-suit figure used in this paper includes all reported decisions, all cases filed in the District Court for the District of Columbia, cases mentioned but not cited in the literature, and other unreported cases suggested by attorneys who worked with Pearson.

²Pearson, who reached a reading audience of nearly fifty million, gloried in the name "muckraker." His daily columns and books reflected many of the themes emphasized by turn of the century muckrakers: "big business" excesses, corrupt government officials, and societal ills. Pearson constantly cried for reform in his columns.

³President Franklin D. Roosevelt placed the "chronic liar" label on Pearson in September of 1943. The President became irritated when Pearson stated in his column that Secretary of State Cordell Hull had long been anti-Russian.

⁴President Harry S Truman, speaking in 1949 at the Army-Navy Country Club in honor of his military aide, General Harry Vaughan, delivered the epithet.

⁵When America's first Secretary of Defense, James Forrestal, committed suicide in 1949, Pearson came under public attack for the harsh treatment he had given the public official in some of his "Merry-Go-Round" columns.

⁶See, e.g., remarks concerning Pearson by Congressmen and Senators in the pages of the Congressional Record, including 96 Cong. Rec. 16641 (1951) (remarks of Senator McCarthy); 90 Cong. Rec. 3683 (1944) (remarks of Senator McKellar); 91 Cong. Rec. 2010-11 (1945) (remarks of Senator Bilbo); 89 Cong. Rec. 4723 (1943) (remarks of Representative Morrison).

⁷Senator Joseph McCarthy of Wisconsin reportedly kicked the muckraker in the groin during a Washington dinner party in December of 1950.

⁸See, e.g., Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

⁹See, e.g., C. Lawhorne, Defamation and Public Officials (1971) for an excellent overview of American libel law development. Prior to 1964, most libel actions were defended under statutory and common law provisions. Basically, there were seven complete (though some were qualified) defenses against defamation actions before 1964: statute of limitations, privilege of a participant, truth, privilege of reporting, fair comment and criticism, consent or authorization, and self-defense or right of reply. See R. Phelps and E. Hamilton, Libel: Rights, Risks, Responsibilities 100-1 (1966). Despite the common law defenses, threat of libel actions obviously remained a cloud over many crusading journalists. See, e.g., Lawhorne at 128-52 for a discussion of the extent of privilege in various jurisdictions before public libel was brought under the umbrella of the First Amendment in 1964.

¹⁰376 U.S. 254 (1964).

¹¹Id. at 279-80. To prove "actual malice," the plaintiff must show that the allegedly libelous statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false.

¹²See, e.g., Justice Brennan's opinion, 376 U.S. at 283. He wrote: "We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included. . . . Nor need we here determine the boundaries of the 'official conduct' concept."

¹³Garrison v. Louisiana, 379 U.S. 64 (1964).

¹⁴Rosenblatt v. Baer, 383 U.S. 75 (1966).

¹⁵Time, Inc., v. Hill, 385 U.S. 374 (1967).

¹⁶See companion cases Curtis Publishing Co. v. Butts and Associated Press v. Walker, 388 U.S. 130 (1967).

¹⁷403 U.S. 29, 44 (1971).

¹⁸418 U.S. 323 (1974).

¹⁹Id. at 343.

²⁰Id. at 345. The Court also went on to refute the Rosenbloom plurality in which it was left to judges to determine if an issue was of "general or public interest." The Court further said that an accommodation of the competing values at stake in defamation suits by private individuals allows States to impose

liability on a less demanding showing--presumably negligence--than that required by the Times doctrine. However, the Court made it clear that States "may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth." Id. at 349.

²¹424 U.S. 448 (1976). The Court defined as a private person a woman who was married to a member of a wealthy industrial family, was a party to a divorce trial which resulted in significant media coverage, and whose appearances in the printed press were frequent enough to warrant subscribing to a press clipping service and to hold several press conferences during the course of the proceedings. Id. at 485 (Marshall, J., dissenting). See, e.g., Stonecipher and Trager, "The Impact of Gertz on the Law of Libel," 53 Journalism Quarterly (Winter 1976): 609-18, for an excellent analysis of the ramifications and uncertainties of Gertz and Firestone.

²²Pearson paid damages of \$40,000 in Littell v. Pearson, Civil No. 49-2959 (D.D.C., May 15, 1953). His family, however, paid settlements in cases brought by New York Congressman Eugene Keogh and U.S. Senator hopeful Alphonse Roy of New Hampshire in order to expedite closing of the columnist's estate. The Keogh and Roy cases were pending when Pearson died on September 1, 1969.

²³The sixty-eight suit figure is based on a list compiled by Pearson's office in 1942. There were, however, numerous other estimates; since the sixty-eight suit figure can be documented, it will be cited as authority for purposes of this article. Donnelly, "The Law of Defamation: Proposals for Reform," 33 Minn. L. Rev. 627 (May 1949), also estimated sixty-eight; O. Pilat, Drew Pearson: An Unauthorized Biography 12 (1973), said "nearly 150" suits were filed; Riesman, "Democracy and Defamation: Fair Game and Fair Comment, Part II," 42 Colum. L. Rev. 1282, 1291 (1942), listed a range of between seventy-five and two-hundred. Warren Woods, a Washington, D.C., lawyer who now represents Pearson's successor, Jack Anderson, aided Pearson's defense in a number of the Sweeney suits. He recalls that Sweeney threatened to sue more than sixty-eight papers, and though he never did, this is likely the basis for some of the more liberal estimates. Interview with Warren Woods, Washington, D.C. attorney, Jan. 13, 1977. Though Pearson was not a formal defendant in all the suits, he provided whatever legal assistance or advice he could to all the newspapers.

²⁴Letter from Drew Pearson to editors and attorneys interested in the Sweeney case, Jan. 18, 1943. Pearson and Sweeney on January 12, 1943, agreed that all outstanding suits against "Merry-Go-Round" client newspapers be dismissed. No apology and no payment was involved. Pearson wrote that Sweeney had "already lost approximately fifty" of the suits and "had reason to feel discouraged." The muckraker, however, said he had

"been very anxious to terminate the headache of having these remaining suits hang over newspapers' heads, even though most editors and publishers did not seem particularly worried by them." Sweeney--prior to the dismissal of all suits--had managed, however, to collect out-of-court settlements from six of the newspapers. Only one of them paid more than two hundred dollars; the Reading (Pennsylvania) Eagle paid nine hundred dollars.

²⁵See, e.g., Donnelly, supra note 23, at 626-28; Noel, "Defamation of Public Officers and Candidates," 49 Colum. L. Rev. 875, 903 (1949); Notes, "Libel Actions Brought by Public Officials," 51 Yale L.J. 693-99 (1942); Notes, "Libelous Publications Affecting Public Officials," 36 Ill. L. Rev. 791-96 (1942).

²⁶See, e.g., progress coverage of Sweeney v. Schenectady Union Publishing Co., 122 F.2d 288 (2d Cir. 1941), aff'd by an equally divided Court, 316 U.S. 642 (1942), in various editions of the New York Times in March and April of 1942.

²⁷Though chain libel suits had long been feared by newspaper publishers, editors, syndicated columnists and publishing syndicate executives, the problem never seem so close-at-hand nor formidable until Sweeney launched his massive campaign.

²⁸Sweeney attempted to keep his colleagues informed of outcomes of his various suits through periodic entries in the Congressional Record. See, e.g., 84 Cong. Rec. 6163 (1939) (remarks of Representative Sweeney) and 87 Cong. Rec. App. A3794 (1941) (remarks of Representative Sweeney).

²⁹Schenectady Union Publishing Co. v. Sweeney, 316 U.S. 642 (1942).

³⁰See Brief for Plaintiff at 1, Sweeney v. United Feature Syndicate, Inc. et al., Civil No. 2880 (D.D.C., April 11, 1941).

³¹Sweeney v. Patterson, 128 F.2d 457 (D.C. Cir. 1942), cert. denied, 317 U.S. 678 (1942).

³²Id. at 458.

³³Sweeney v. Caller-Times Publishing Co., 41 F. Supp. 163, 167 (S.D. Tex. 1941).

³⁴Sweeney v. Philadelphia Record Co.; Sweeney v. Chronicle & News Publishing Co.; Sweeney v. Steinman & Steinman, Inc., 126 F.2d 53 (3d Cir. 1942).

³⁵Id. at 55.

³⁶Id.

³⁷122 F.2d at 289. The case, however, was never tried. An order of discontinuance was issued by the District Court on Feb. 5, 1943, shortly after Sweeney agreed to drop all pending suits.

³⁸Id. at 291.

³⁹Id. (Clark, J., dissenting).

⁴⁰Schenectady Union Publishing Co. v. Sweeney, 314 U.S. 605 (1942).

⁴¹See, e.g., Notes, "Libel Actions Brought by Public Officials," supra note 25; Notes, "Libelous Publications Affecting Public Officials," supra note 25.

⁴²As cited in Sullivan, the Schenectady suit was "the only previous case that did present the constitutional limitations upon the power to award damages for libel of a public official." New York Times Co. v. Sullivan, 376 U.S. at 268.

⁴³Schenectady Union Publishing Co. v. Sweeney, 316 U.S. 642 (1942).

⁴⁴New York Times, April 14, 1942, at 19, col. 1. Pearson, irritated with the High Court deadlock, instructed his attorneys to conduct a search for tie-vote precedents. Tenacious in his belief that the Court should have made a clear-cut decision, the muckraker helped his attorneys draft a preliminary legal brief. In the brief, it was emphasized that since "attorneys in all these other Sweeney cases urgently recognize the need for guidance by this Court" they had joined in the petition for rehearing. Pearson felt that if the Supreme Court denied the petition for rehearing there would "continue to emerge, as there has up to now, a crazy quilt of conflicting rulings in the realm of federal constitutional law and of charges made against national legislators." Preliminary draft, Pearson's thoughts on the importance of the case. The Court, however, denied the motion, with Justice Jackson again taking no part. 316 U.S. 710 (1942).

⁴⁵McGonigle v. Pearson, Civil No. 58-2725 (D.D.C., March 27, 1961); Wallace v. Pearson, Civil No. 56-710 (D.D.C., May 29, 1956).

⁴⁶Howser v. Pearson, 95 F. Supp. 936 (D.D.C. 1951).

⁴⁷Clark v. Pearson, 248 F. Supp. 188 (D.D.C. 1965).

⁴⁸Corso v. Pearson, Civil No. 66-482 (D.D.C., April 21, 1967); Ware v. Pearson, Civil No. 22580 (D.D.C., May 2, 1944).

⁴⁹Malaxa v. Pearson, Civil No. 55-5549 (D.D.C., May 29, 1962).

⁵⁰Kefalos v. Pearson, Civil No. 57-720 (D.D.C., May 9, 1957).

⁵¹Howser v. Pearson, supra note 46.

⁵²Gariepy v. Pearson, 207 F.2d 15 (D.C. Cir. 1953), cert. denied, 346 U.S. 909.

⁵³During this era, Presidents denounced him, Congressmen verbally crucified him on the libel-proof floors of their respective houses, and broadcast sponsors dropped him as a result of his volatile dealings with people in power.

⁵⁴Pre-1964 libel cases in which Pearson was a defendant include: Anderson v. Allen, Civil No. 8592 (D.D.C., Jan. 31, 1941); Bramblett v. Pearson, Civil No. 32000 (N.D. Calif., June 4, 1953); Dall v. Pearson, 246 F. Supp. 812 (D.D.C. 1963); Dennett v. Pearson, Civil No. 37711 (D.D.C., Nov. 19, 1949); Duncan v. Pearson, 135 F.2d 146 (4th Cir. 1943); Earl v. Pearson, Civil No. 58-339 (D.D.C., Nov. 10, 1958); Franzino v. Pearson et al., Civil No. 49-1848 (D.D.C., Jan. 26, 1953); Gariepy v. Pearson, 207 F.2d 15 (D.C. Cir. 1953), cert. denied, 346 U.S. 909; Howard v. The Washington Post Co., Civil No. 50-1088 (D.D.C., May 25, 1953); Howard v. The Washington Post Co., Civil No. 49-2611 (D.D.C., April 12, 1951); Howser v. Pearson, 95 F. Supp. 936 (D.D.C. 1951); Kefalos v. Pearson, Civil No. 57-720 (D.D.C., May 9, 1957); Koehne v. Radio Corporation of America, Civil No. 21309 (D.D.C., Nov. 12, 1945); Laughlin v. Pearson, Civil No. 24632 (D.D.C., Feb. 15, 1945); Littell v. Pearson, Civil No. 49-2959 (D.D.C., May 15, 1953); Littell v. Pearson, Civil No. 50-2505 (D.D.C., Sept. 30, 1953); MacArthur v. Pearson (D.C. Sup. Ct. 1934), in New York Times, May 17, 1934, at 20, col. 4; McGonigle v. Pearson, Civil No. 58-2725 (D.D.C., March 27, 1961); Malaxa v. Pearson, Civil No. 55-5549 (D.D.C., May 29, 1962); Monroe v. Pearson, Civil No. 20241 (D.D.C., March 31, 1944); Rockwell v. Pearson, Civil No. 59-699 (D.D.C., May 18, 1959); Ross v. Pearson, Civil No. 49-778 (D.D.C., Feb. 27, 1952); Rumely v. Pearson, Civil No. 48-1348 (D.D.C., June 23, 1948); Silver Motors, Inc. v. Pearson, Civil No. 48-2411 (D.D.C., Dec. 10, 1948); Wallace v. Pearson, Civil No. 56-710 (D.D.C., May 29, 1956); Ware v. Pearson, Civil No. 22580 (D.D.C., May 2, 1944).

⁵⁵Earl v. Times, Inc., Civil No. 20545 (Coos County, Ore., Cir. Ct., April 12, 1958); Earl v. Hearst Publishing Co., Civil No. 4443 (W.D. Wash., Oct. 3, 1958); Monroe v. Meyer, Civil No. 20242 (D.D.C., March 31, 1944).

⁵⁶Allen v. The Journal of Commerce Publishing Co., Civil No. 40S-8696 (Super Ct., Cook County, Ill., Jan. 16, 1948); Pearson v. Funkhouser et al. (no Civil Action number) (Cir. Ct., Jefferson County, W. Va., Feb. 6, 1948); Pearson v. Hearst Consolidated Publications, Inc., Civil No. 49-31541 (N.Y. County Sup. Ct., Oct. 19, 1955); Pearson v. Howser, Civil No. 50-3529 (D.D.C., Dec. 11, 1951); Pearson v. McCarthy,

Civil No. 51-897 (D.D.C., Feb. 15, 1956); Pearson v. O'Connor, Civil No. 9630 (D.D.C., July 16, 1942); Pearson v. Pegler, Civil No. 45-3205 (N.Y. County Sup. Ct., Jan. 7, 1946); Pearson v. Pegler et al., Civil No. 97-344 (S.D. N.Y., May 22, 1956); Pearson v. The Detroit Times Division, Hearst Publishing Co., Inc., Civil No. 9479 (E.D. Mich., Sept. 28, 1955); Pearson v. The Hearst Corp. et al., Civil No. 49-31542 (N.Y. County Sup. Ct., Oct. 19, 1955); Pearson v. The San Antonio Light Publishing Co., Civil No. F-54905 (57th Jud. Dist., Bexar County, Texas, Oct. 14, 1955); Pearson v. Time, Inc., Civil No. 47-411 (D.D.C., Nov. 5, 1948); Pearson v. Wright, 156 F. Supp. 136 (D.D.C. 1957).

⁵⁷Littell v. Pearson, Civil No. 49-2959 (D.D.C., May 15, 1953).

⁵⁸Complaint for Plaintiff at 1-2, Littell v. Pearson.

⁵⁹Id. at 1.

⁶⁰Id. at 2. Under the Foreign Agents Registration Act of 1938, willful failure of a propagandist for a foreign government, political party, or foreign group to register as a foreign agent was punishable by up to a \$10,000 fine, five years in prison, or both.

⁶¹T. Abell, ed. Drew Pearson Diaries, 1949-1959 267 (1974).

⁶²Verdict of Jury for Plaintiff, U.S. District Court, District of Columbia, May 15, 1953.

⁶³Post-1964 libel actions in which Pearson was a defendant include: Christopher v. Pearson, Civil No. 885082 (Super. Ct., Los Angeles, Calif., County, March 3, 1967); Clark v. Pearson, 248 F. Supp. 188 (D.D.C. 1965); Coreil v. Pearson, 242 F. Supp. 802 (W.D. La. 1965); Corso v. Pearson, Civil No. 66-482 (D.D.C., April 21, 1967); Keogh v. Pearson, 244 F. Supp. 482 (D.D.C. 1966); Keogh v. Pearson, Civil No. 64-1274 (D.D.C., July 9, 1974); Keogh v. Pearson, Civil No. 64-C940 (E.D. N.Y., Dec. 16, 1965); O'Brien v. The Tribune Publishing Co., Civil No. 4183 (W.D. Wash., May 12, 1972), rev'd and remanded, No. 72-2312 (9th Cir., Feb. 20, 1975); Pearson v. Dodd, 410 F.2d 701 (D.C. Cir. 1969), cert. denied, 395 U.S. 947; Roy v. Monitor Patriot Co., 254 A.2d 832 (N.H. 1969), rev'd and remanded, 401 U.S. 265 (1971); Thompson v. Pearson, Civil No. 62-3133 (D.D.C., Sept. 14, 1965).

⁶⁴Pearson v. Christopher, Civil No. 885082 (Super. Ct., Los Angeles, Calif., County, March 3, 1967); Pearson v. Fairbanks Publishing Co., 413 P.2d 711 (Alaska 1966).

⁶⁵Keogh v. Pearson, Civil No. 62-3788 (D.D.C., July 9, 1974); Keogh v. Pearson, Civil No. 64-1274 (D.D.C., July 9, 1974); Keogh v. Pearson, Civil No. 64-C940 (E.D. N.Y., Dec. 16,

1965). The first case, filed in 1962, was reported as *Keogh v. Pearson*, 244 F. Supp. 482 (D.D.C. 1965).

⁶⁶*Roy v. Monitor Patriot Co.*, 254 A.2d 832 (N.H. 1969), rev'd and remanded, 401 U.S. 265 (1971).

⁶⁷See note 65 supra.

⁶⁸*The Washington Post Co. v. Keogh*, 365 F.2d 965, 969 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967).

⁶⁹*Keogh v. Pearson*, 244 F. Supp. at 486.

⁷⁰Id. at 483.

⁷¹Id. at 486.

⁷²*The Washington Post Co. v. Keogh*, supra note 68.

⁷³Id. at 972.

⁷⁴See, e.g., Judge Wright's praise of the virtues of a free press and the importance of muckraking investigative reporters. Id. at 971-73.

⁷⁵*Keogh v. Pearson*, Civil No. 62-3788 (D.D.C., July 9, 1974) and Civil No. 64-1274 (D.D.C., July 9, 1974).

⁷⁶Interview with Tyler Abell, Washington, D.C., attorney, Jan. 11, 1977.

⁷⁷*Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971).

⁷⁸Id. at 266.

⁷⁹Id. at 266-67. Pearson became personally involved in the case because he had an indemnity contract with the distributor.

⁸⁰Id. at 268-69.

⁸¹Id. at 270.

⁸²Id. at 271.

⁸³Id. at 273.

⁸⁴Id. at 277.

⁸⁵Interview with Tyler Abell, supra note 76.

⁸⁶128 F.2d 457 (D.C. Cir. 1942). The Circuit Court affirmed a District Court ruling that a plaintiff who was a public official had to be falsely charged with crime, corruption, gross immorality or gross incompetence to collect libel damages.

⁸⁷98 Pac. 281 (Kan. 1908). The Coleman case was cited in New York Times Co. v. Sullivan, 376 U.S. 254 at 280-82, as establishing the liberal rule relied upon by a number of state courts prior to Sullivan that excused false statements about officials that ordinarily would have been libelous, provided the statements were published without malice and with probable cause for believing them true.

⁸⁸Sweeney v. Patterson, 128 F.2d at 458.

⁸⁹Interviews with Ernest Cuneo, Washington, D.C., attorney, Aug. 30, 1977; F. Joseph Donohue, Washington, D.C., attorney, Jan. 19, 1977; William P. Rogers, New York City attorney, Sept. 9, 1977; George Vournas, Washington, D.C., attorney, Jan. 18, 1977; Warren Woods, Washington, D.C., attorney, Jan. 13, 1977.

⁹⁰See note 86 supra.

⁹¹See Riesman, supra note 23 at 1284-85. Pearson's situation with John Donovan as his personal attorney is analagous to that of large newspapers which retained experienced libel attorneys.

⁹²122 F.2d 288 (2d Cir. 1941), aff'd by an equally divided Court, 316 U.S. 642 (1942).

⁹³128 F.2d 457, supra note 86.

⁹⁴The cases were mentioned as examples of pre-1964 libel decisions which confronted the problem of a different criteria being applied when awarding damages for alleged libel of a public officials, rather than private individual.

⁹⁵The Washington Post Co. v. Keogh, 365 F.2d 965, supra note 68.

⁹⁶401 U.S. 265 (1971).